

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

MICHAEL ANTHONY KING

PLAINTIFFS

VS.

CIVIL ACTION NO. 2:11cv16-P-S

W.W. GRAINGER, INC.

DEFENDANT

ORDER

This matter comes before the court on Plaintiff's Motion [doc. 130] to Compel Discovery from the Defendant Grainger. Following a hearing held on October 6, 2011, the court finds as follows:

With regard to Plaintiff's requests for production of documents 1, 2, 3, 4, 6, 8 and 10, Grainger's counsel represents that either these documents have already been produced, or they no longer exist due to a formal company policy directing, in the absence of notice of a potential claim or litigation, the destruction of such material after a designated period of time. Grainger asserts that these documents were destroyed pursuant to the policy prior to notice of Plaintiff's claim which came four months following his termination. Though the plaintiff points out that at least for several days after his termination, the documents and tangible evidence sought, or at least some of them, did continue to exist, there is no proof to contradict the representations of Grainger's counsel regarding the ultimate destruction of the documents in accordance with the company policy prior to notice of a claim. Accordingly, the motion to compel production will be denied. Nevertheless, Grainger and its counsel are reminded that its representations in this regard must be premised on a reasonably diligent effort to ensure those representations are accurate.

With regard to requests for production of remaining documents 4 and 9, the court finds that these documents are not relevant or reasonably calculated to lead to the discovery of admissible evidence as this court has previously dismissed any failure to promote claim asserted

by plaintiff. Plaintiff's claim is limited to that of termination on the basis of gender and these documents do appear discoverable on that claim.

IT IS, THEREFORE, ORDERED that the plaintiff's motion to compel is **DENIED** pursuant to the Court's opinion above.

This, the 12th day of October, 2011.

/s/ Jane M. Virden
UNITED STATES MAGISTRATE JUDGE